**Before the**
**FEDERAL COMMUNICATIONS COMMISSION**
**Washington, D.C. 20554**

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| In the Matter of | ) | |
| | ) | |
| 2002 Biennial Regulatory—Review of the Commission's Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecommunications Act of 1996 | ) | MB Docket No. 02-277 |
| | ) | |
| Cross-Ownership of Broadcast and Newspapers | ) | MM Docket No. 01-235 |
| | ) | |
| Rules and Policies Concerning Multiple Ownership of Radio Broadcast Stations in Local Markets | ) | MM Docket No. 01-317 |
| | ) | |
| Definition of Radio Markets | ) | MM Docket No. 00-244 |

**Comments of the**
**American Federation of Labor and Congress of Industrial Organizations**
**on behalf of its 65 member unions including the**
**American Federation of Television and Radio Artists**
**Communications Workers of America**
**National Association of Broadcast Employees and Technicians of the CWA**
**The Newspaper Guild of the CWA**
**Writers Guild of America, East, Inc.**
**and the**
**Department for Professional Employees, AFL-CIO**

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*Dated*: January 2, 2003

## SUMMARY

In these comments, the AFL-CIO discusses the implications of weakening or eliminating the Commission's remaining broadcast ownership restrictions from the perspective of the Commission's three stated policy goals: to further diversity, localism and competition in the nation's media. It draws on the report by Dr. Dean Baker, co-director of the Center for Economic and Policy Research, Washington, D.C., entitled *Democracy Unhinged, More Media Concentration Means Less Public Discourse, A Critique of the FCC Studies on Media Ownership,* and other relevant studies submitted to the Commission in connection with this rulemaking.

Based on this review, weakening and eliminating these rules would not be in the public interest. The promotion of viewpoint diversity should continue to be the primary goal of the Commission's broadcast policy. Maintaining diverse and antagonistic media sources is vital for ensuring that people have access to the news and information they need to participate as citizens in a democratic society.

The proliferation of media outlets has not reduced the need for the Commission to ensure diversity. While there has been a proliferation of new types of media outlets during the same period, including cable, the Internet, DBS and satellite channels, etc., the evidence shows that the overall rate of growth in the number of media outlets in general has decreased at the same time that media ownership has become more concentrated.

In addition, the data shows that the public does not substitute among the different media. Rather, each market—television, radio, newspaper—is unique and consumers use each outlet differently. Furthermore, the new media outlets (cable, DBS, Internet) still have a marginal role in providing news and information to the general public. Finally, the new media outlets are controlled by the same media conglomerates that control traditional media, and therefore cannot be deemed to be distinct voices in the marketplace.

Growing media concentration also is having a negative impact on journalistic programming content and quality. Academic studies and surveys of working journalists document show that media ownership influences editorial voice by eroding the wall between the business and editorial side of news source, affecting the ability of local news stations to maintain their journalistic independence. Moreover, media concentration reduces media coverage of concern to minority communities and can limit and bias public interest and political report.

Corporate dominance of local media markets has added to the general reduction of public interest reporting, such as consumer issues, which may run counter to the media conglomerates' economic self interest. The AFL-CIO is especially concerned about the precipitous decline in coverage of labor issues, and the sometimes refusal to air ads paid for by labor organizations that might antagonize advertisers. Baker notes that none of the Commission's studies even attempts to address these issues.

A wealth of empirical data before the Commission further shows how media ownership concentration hurts localism by undercutting local news coverage and local programming. Maintaining local identity is a fundamental principle of quality journalism and responsible media. Journalists should be encouraged to preserve the identity and values of local communities, and to disseminate the views, values, and information

important to the various groups within the local community, as well as educate communities about national and global perspectives.

In addition, empirical and anecdotal evidence supports the need to retain the media ownership rules in order to maintain competition in national and local markets. The mere proliferation in the number of media outlets is not sufficient for ascertaining the extent of true media competition necessary to preserve diverse, antagonistic voices in the media. Local and national media markets are already highly concentrated, raising the risk of anti-competitive business practices. The data indicates that the consumption of broadcast material will fall as media concentration increases, and that advertisers will payer higher rates. Anti-competitive pricing in advertising also can affect programming because such pressures compel companies to force stations to influence and change programming to appeal to advertisers.

Finally, based on the general review above, and extensive evidence presented in the comments, specific to five of the six rules under consideration in the consolidated rulemaking:

- The Commission should retain the Newspaper-Broadcast Cross-Ownership Rule because it remains necessary to promote diversity and competition in local news and information;
- The Commission should retain the remaining Local Television and Radio Ownership Rules to ensure the continued existence of independent local television news operations, protecting this vital public resource so critical to our democratic structure;
- The Commission should retain the remaining Local Radio Ownership Limits because the accelerated pace of deregulation in the radio industry to date has diminished the diversity of music available in local markets, damaged the quality of radio programming nationwide and created a market burdened by anti-competitive practices; and
- The Commission should retain the dual network rule to protect against the erosion of local news and to revitalize and encourage innovation in entertainment programming.

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# I. INTRODUCTION

These are the comments submitted by the American Federation of Labor and Industrial Organizations (AFL-CIO) filed in response to the Federal Communications Commission Notice of Proposed Rule Making (*NPRM*) released September 23, 2002, to comment on the Commission's comprehensive review of its media ownership rules, pursuant to Section 202 of the Telecommunications Act of 1996 which requires the Commission to conduct biennial regulatory review of these rules.

The AFL-CIO is a federation of national and international unions representing 13 million working people and the 40 million people in union households, who depend upon a diverse and antagonistic media sources to provide the news and information they need to participate as citizens in a democratic society. The more than quarter of a million members of AFL-CIO unions who are employed in the news and entertainment industries work hard every day to provide their local communities with news and information from the widest possible array of diverse and antagonistic sources. But all too often they face powerful constraints as they go about their jobs—constraints imposed by the business objectives of the large media conglomerates, newspaper chains, and corporations who own the media outlets where they work. These constraints have multiplied in recent years as large and distant media corporations have taken over local newspapers and radio and television stations, imposing profit goals that can only be met by large cuts in news budgets and through reduced local news coverage. Working journalists and other media employees know from daily experience that media ownership influences the content, depth, and quality of the news and information they are able to publish and air over the public airwaves. Maintaining the media ownership rules, therefore, is important to protect against further erosion of diversity, localism, and quality in the nation's news media.

In these comments, the AFL-CIO will discuss the implications of weakening or eliminating the Commission's remaining broadcast ownership restrictions from the broad perspective of the Commission's three stated policy goals, namely furthering diversity, localism and competition in the nation's media. In addressing these issues, it will draw on the report by Dr. Dean Baker, co-director of the Center for Economic and Policy Research, Washington, D.C., entitled *Democracy Unhinged, More Media Concentration Means Less Public Discourse, A Critique of the FCC Studies on Media Ownership*[1] (attachment A) and other relevant studies that have been submitted to the Commission in connection with this rulemaking.

The Baker report evaluates the findings of 12 studies that the Commission commissioned to generate data on the effects of media consolidation and the state of the media industry. In addressing a number of questions raised by the Commission in its *NPRM*, the AFL-CIO also will review the substantial amount of other empirical data available that shows that diverse ownership over different media outlets is essential for the protection of viewpoint diversity in local markets and that media consolidation has hurt diversity and localism and has spawned anti-competitive business practices.

The evidence shows that, notwithstanding the development of new outlet technologies, including cable, DBS, and the Internet, ownership concentration over all media is growing, the rate of growth of media outlets is slowing, and where there is a loss of an outlet or voice, particularly in news, the public does not substitute the loss with another outlet, but, instead, consumes less news overall. Further, there is empirical evidence that the loss of local newspapers and broadcast television may discourage voting and perhaps other civic activity at the heart of our American democracy.

Following the discussion on the implications of relaxing the media ownership rules on the Commissions public interest policy goals, the AFL-CIO reviews five of the six rules currently under consideration in the consolidated rulemaking,[2] and demonstrates why these rules continue to be an essential tool for ensuring diversity, localism and competition in local and national media markets. Based on this review, the AFL-CIO strongly urges the Commission to maintain the remaining broadcast ownership rules.

## II. THE PROMOTION OF VIEWPOINT DIVERSITY SHOULD CONTINUE TO BE THE PRIMARY GOAL OF THE COMMISSION'S BROADCAST POLICY

In its *NPRM*, the Commission asks whether viewpoint diversity should continue to be a primary goal of its decision-making.[3] To this, the AFL-CIO answers a resounding yes. As long recognized by the Commission, and as repeatedly confirmed by the courts, viewpoint diversity is vital to our democracy and public welfare. "It advances the values of the First Amendment," and rests on the assumption that the widest possible dissemination of information from diverse and antagonistic sources is essential to the welfare of the public."[4] Further, as the Commission has recognized and the courts have confirmed, ownership limits are a rational and appropriate manner of promoting

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[1] Sponsored by American Federation of Television and Radio Artists, The Newspaper Guild-Communications Workers of America, and Writers Guild of America-East, Washington, D.C., Department of Professional Employees, AFL-CIO, December 2002.

[2] This includes the newspaper/broadcast cross-ownership prohibition; the local radio ownership rule; the local TV multiple ownership; the radio/TV cross-ownership restriction; and the dual television network rule.

[3] *NPRM,* ¶45.

viewpoint diversity as "the greater the diversity of ownership in a particular area, the less chance that there is a single person or group that can have an inordinate effect, in a political, editorial, or similar programming sense, on public opinion at the regional level."[5] Thus, "promoting the widespread dissemination of information from a multiplicity of sources' is a government interest that is not only important, but is of the 'highest order' and is unrelated to the suppression of free speech."[6]

As the overwhelming reliable and available data makes clear, the local media marketplace is threatened with the loss of viewpoint diversity, so essential to our American culture and democracy, and the Commission should refrain from further weakening the remaining ownership rules in order to protect this vital public resource.

The media companies that oppose broadcast ownership limits base their arguments on two faulty premises. First, they argue that because there is now such a multiplicity of types and numbers of outlets in any media market compared to when the media rulings were first made, that ownership is no longer a serious factor affecting the availability of diverse viewpoints and sources of information. Second, they argue that there is substantial substitution between types of media outlets for obtaining news and information, even at the local level. The evidence refutes these contentions.

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[4] *Id.,* ¶35 (citing *Turner Broadcasting System, Inc. v. FCC*, 51 U.S. 622, 663-64 (1994)).
[5] *Id.,* ¶14.
[6] Id., ¶22 (citing Turner, 512 U.S. 622, 662-63).

## A. The Proliferation of Media Outlets Has Not Reduced The Need for the Commission to Ensure Diversity

### 1. Slower Growth In the Number of Outlets Coincides With Increasing Media Concentration

It is undisputed that since the broadcast ownership restrictions were weakened by the Telecommunications Act of 1996 (the Act), the concentration of media ownership has grown dramatically. Further, while there has been a proliferation of new types of media outlets during the same period, including cable, the Internet, DBS and satellite channels, etc., the evidence shows that the overall rate of growth in the number of media outlets in general has *decreased* at the same time that media ownership has become concentrated. Thus, media concentration is associated with an overall decrease in the rate of growth of media outlets.

In the FCC commissioned study conducted by S. Roberts, J. Frenette, and D. Stearns (2002) "A Comparison of Media Outlets and Owners for Ten Selected Markets: 1960, 1980, 2000" (Study #1), the data revealed that the growth of media outlets and in the number of owners has slowed considerably as media ownership has consolidated since 1980. This is in contrast to the rising rate of growth in the number of outlets in the preceding period, 1960 –1980, during which time the ownership limits constrained media consolidation. In fact, a close look at the data shows that ownership concentration actually received a large boost in last twenty year period, compared to the previous two decades.[7]

[7] Extrapolating from Roberts et al's data, calculations of media concentration defined as number of outlets per owners in each markets indicates that, despite the growth in outlets, the level of ownership concentration increased between 1980 and 2000 in 7 out of the ten markets (with the changes in two out of the three that decreased being very slight) and increased in 8 out of 10 between 1960 and 2000, with one jumping back to the same level of concentration in 2000 after dropping between 1960-1980. Since concentration levels dropped in all but three markets during the rapid proliferation of outlets between 1960 and 1980, the jump in this concentration measure after 1980 is particularly marked.

Indeed, in another Commission sponsored study, G. Williams and S. Roberts, (2002) "Radio Industry Review: Trends in Ownership, Format, and Finance" (Study #11), the data revealed a definite link between media concentration resulting from the weakening of the radio ownership rules and a sharp drop in the rate of growth in the number of radio outlets. As Baker explains in his report, the study examined changes in the radio industry over the six years that followed the weakening of restrictions on the number of radio stations that could be owned by a single company. The study found a sharp increase in concentration over this period. The study found that since the 1996 rule changes, the number of distinct owners fell by 34 percent while the growth rate in radio stations slowed. Specifically, it found that the four firm concentration ratio (as measured by shares of ad revenue) grew from less than 65 percent in 1996 to more than 85 percent in 2002.[8]

Similarly, another Commission sponsored study, J. Levy, M. Ford-Livene, and A. Levine (2002) "Broadcast Television: Survivor In a Sea of Competition" (Study #12) presented evidence of diminished growth in the number of broadcast television stations comparable to the evidence for slower growth in radio outlets found in Williams and Roberts. Specifically, the data indicates that there has been a sharp slowdown in the rate of growth in the number of broadcast television stations over the last ten years. Between 1980-85, the total number of stations grew by 18.4 percent, and between 1985-90, it rose by 20.5 percent. But over the first half of the 1990s, the growth rate was only 6.2 percent, and during second half, it fell to 5.7 percent.[9]

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[8] Baker, 17-18.
[9] *Id.,* 21.

As explained by Baker, the simple number of media outlets available in a local community does not provide a basis for determining the range of choices available to consumers. "If a small number of outlets are able to dominate the market," he adds, "the availability of a large number of very small outlets could mean little to either consumers or advertisers. Unfortunately, this study provides no information on market shares."[10] Any serious study of local media markets, however, must, at a minimum, analyze the market share of the different outlets.

The AFL-CIO raised this concern in its reply comments on the newspaper/ broadcast cross-ownership rule earlier in 2002.[11] In their comments on the cross-ownership rule, the newspaper publishers and broadcasters attempted to argue that the proliferation of media outlets in local markets eliminated the need for the Commission to maintain media ownership rules. Drawing on studies provided by the United Church of Christ et al,[12] the AFL-CIO argued that the studies the publishers and broadcasters introduced to support this position are seriously flawed, because they fail to analyze market share, indicate media outlet ownership, and change over time in both these areas.[13] Those studies are simply lists of outlets, with no market share data. They fail to

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[10] *Id.,* 15. Baker also faults the study for not breaking out the trends in radio and television stations, which are lumped together under the category of broadcast outlets, 17.

[11] Reply Comments of the American Federation of Labor and Congress of Industrial Organizations, *In the Matter of Cross Ownership of Broadcast Stations and Newspapers; Newspaper/Radio Cross-Ownership Waiver Policy*, MM Docket No. 01-235, MM Docket No. 96-197. Filed with FCC February 15, 2002, ("AFL-CIO NBCO Reply Comments"), 11-13.

[12] Comments of Office of Communication, Inc. of United Church of Christ, National Organization of Women and Media Alliance, *In the Matter of Cross-Ownership of Broadcast Stations and Newspaper, Newspaper/Radio Cross-Ownership Waiver Policy,* MM. Docket No. 01-135, MM Docket No. 96-197, Attachment 3, Dec. 3, 2001 ("UCC et al").

[13] *See* for example, Comments of the Newspaper Association of America ("NAA"), *In the Matter of Cross-Ownership of Broadcast Stations and Newspaper; Newspaper/Radio Cross-Ownership Waiver Policy,* MM Docket No. 01-235, MM Docket No. 96-197, Dec. 3, 2001, 11-15 and Appendix IV; Comments of New York Times, 2-7 and Attachment 1. For the same filing, see also the Comments of Hearst Corp., 18-19 and Appendices A-C; Comments of Hearst-Argyle, Exhibit 1; Comments of Gannett, 14-15 and Exhibit B;

differentiate between outlets that provide local news and information and those that are simply advertisers or entertainment. They also fail to provide ownership information, giving the impression that a local cable news network or Internet site is a different voice, when in fact it is owned and its content is provided by the local newspaper or TV station.

UCC et al, by contrast, shows that when market share is taken into account, market concentration in local radio and television markets appears to have increased, despite the purported growth in outlets. Thus, the AFL-CIO argued that the Commission cannot make an accurate assessment of local media markets based on these studies. It consequently urged the Commission to undertake a comprehensive study of its own to determine the state of competition among diverse and antagonistic news outlets in the various local media markets. Absent such a comprehensive study, subject to public comment and review, the AFL-CIO believes that the Commission does not have adequate data upon which to justify a change in the rule.

Unfortunately, the Commission-sponsored studies that examine the growth of media outlets appear to make the same errors as the broadcasters' and publishers' studies, and fail to address the concerns raised in the AFL-CIO's earlier comments. It is apparent that the they provided very inconclusive data concerning media concentration and diversity, and did not ask the right questions that would give the Commission better information with which to evaluate the ownership rules. The lack of such an analysis is why, for example, the findings of Roberts et al (2002) (Study #1), which purports to show the broad range of consumer choices available in the media marketplace today is flawed

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Comments of Media General, 19-26 and Appendices 9-14; Comments of Belo, 8-9; Comments of Tribune, 12-33.

and misleading. This study cannot be relied upon as a basis for assuming consumer choice because it does not take market shares into account.

In addition to market share, the extent of media concentration in a local community also must take into account the existence of Local Marketing Agreements (LMAs), which are agreements by which a group owner pays a station owner for the right of control over a station (and profits from that station) without obtaining actual ownership. As LMAs permit group owners to control stations over which they have no nominal "ownership" title, any analysis of local media concentration must take these into account.

In summary, the data shows that the weakening of the ownership rules during the last twenty years has led not only to overwhelming media ownership consolidation, but also to a *reduction* in the rate of growth in number of radio and television stations, and in particular, to a halt in the number of educational television stations. The Commission should view this trend with alarm because, as shown below, the implication of this data is a sharp reduction in the quality and diversity of news and other information and programming that is available to the general public.

### 2. The Public Does Not Substitute Among the Different Media

The Commission seeks comment on the question of whether consumers view the new media, i.e., cable, the Internet, satellite, DBS and DARS, etc. as sources of local news and information.[14] The proponents of loosening ownership caps argue that because of the proliferation of media outlets, ownership restrictions no longer are needed. There are now so many different sources of news and information that if a viewer can't get

[14] *NPRM,* ¶77

information from one type of media, they can go to another. This argument of the "substitutability" of media outlets assumes that different media outlets serve the same purposes for the same markets. As Baker states, "[t]he issue of substitution across media is directly relevant to the FCC's assessment of current rules, since concentration in one type of medium is of less concern if consumers can readily move to another medium."[15] As the data shows, however, this assumption of substitutability is simply wrong as each market—television, radio, newspaper—is unique and consumers use each outlet differently.

In the Commission sponsored study by J. Waldfogel (2002) "Consumer Substitution Among the Media" (Study #3), the data shows very weak substitutability between media outlets and sources. Indeed, in his executive summary of the study results, Waldfogel cautions the Commission against any reliance on the data submitted as evidence of strong substitution effects, stating that while there was some limited evidence of substitutability, "even if substitution operates, it is not complete in this sense, i.e., that civic behaviors affected by media consumption [such as voting] would be unaffected by "the changes in the availability or use of any particular medium."[16]

As explained by Baker in his review of Waldfogel's study:

> The evidence uncovered by these methodologies shows very limited substitution between media. In the case of the first methodology the only substitutions that are significant at even a ten percent confidence level are the substitutions between access to radio outlets and cable use, access to radio news and Internet use, access to daily papers and cable use, and the circulation of daily papers and cable use. This methodology finds *no* evidence of substitution between cable television usage and broadcast television usage, between Internet usage and broadcast television usage, between newspaper usage and Internet usage, or any other types of substitution that have frequently been suggested" (emphasis added).[17]

[15] Baker, 10.
[16] Waldfogel, 3-4.
[17] Baker, 10.

Baker explained that these findings were "far too weak to provide a basis for policy" (consistent with Waldfogel's caveat in his executive summary as noted above) as "economists are usually hesitant to attribute very much importance to a result that is statistically significant at just a 10 percent level." Moreover, the findings in Waldfogel's second methodology, which controlled for "obvious determinants of news use, such as income and education, found only limited substitution (again, at only a very weak statistical standard of significance) between Internet usage and television.[18]

In sum, what Waldfogel shows is not that people substitute between different media outlets for news, but just the opposite—"that media outlets are complements, i.e., people who get more news from one source such as television, are also likely to get more news from a second source, such as a daily newspaper" and that "reduced access to news in any medium could lead consumers to get significantly less news generally, as they would be less likely to seek out news from other media."[19]

More important, as Baker points out, Waldfogel cites and incorporates the findings of an earlier study he conducted with L. George,[20] which revealed "a statistically negative relationship between *New York Times* readership and voting in local elections for college educated people" as well as a "statistically negative relationship between *New York Times* readership and readership of local newspapers."[21] Based on Waldfogel's studies, Baker warns that "there could be very significant unintended consequences [in

[18] *Id.,* 11. It should also be stated that while the study also noted certain other types of substitution, these other findings were noted at "a very weak standard of statistical significance (a t-statistic exceeding 1 in absolute value)," which, as Baker reports, "economists usually just dismiss . . . as 'statistically insignificant.'" *Id.*, 10.
[19] *Id.*
[20] George, L. and J. Waldfogel, 2002 "Does the New York Times Spread Ignorance and Apathy?" The Wharton School. http://rider.wharton.upenn.edu/waldfogej/workpap.html.
[21] Baker, 12.

civic behavior] from changes in the availability of different types of media" and specifically, in the availability of local news.[22]

It should be noted that the other Commission sponsored study that purported to provide data on the substitutability of media outlets, the study by the Nielsen Media Research Group (2002) "Consumer Survey on Media Usage" (Study #8), provided only limited reliable data. The Nielsen survey showed that close to 85 percent of respondents identified television and 63 percent identified the local newspaper as their source for news and information. The Nielsen study appears to show the promise of greater substitution among media in the future, but this data is not based on evidence of actual behavior, but, instead on an opinion survey of what people *think they may do in the future*. As Baker explains, this data is unreliable because people may think that they will behave in a manner that is different from how they actually behave.[23] Baker adds that most economists believe that "observations of actual behavior provide a more reliable guide for policy than surveys in which respondents indicate how they think they would behave," and that the beliefs stated in the Nielsen opinion survey would necessitate a substantial turnaround from people's actual practice to date, as shown by the responses to inquiries of respondents' current media usage in the Nielsen survey as well as the data in Waldfogel's studies, among others.

### 3. New Technologies Have a Marginal Role in Providing News And Public Affairs Programming to Local Communities

The new media marketplace is also unable to provide diversity of viewpoint without regulatory ownership controls because these new media outlets still have a

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[22] *Id.*
[23] Baker, 13.

marginal role in providing news and information to the general public. The broadcast television or radio or newspaper outlet is simply not the same as the Internet or other new media outlet that simply provides advertising or entertainment.

The empirical evidence submitted to the Commission by the Consumers Union et al in its comments on the newspaper/broadcast cross-ownership rule,[24] is directly relevant to the question of how relevant the new media outlets are in providing news and information to local communities. The CU et al study found that most local communities simply did not utilize cable, DBS, or the Internet as significant sources for news. This study found that only about 4 percent of consumers use the Internet for news.[25] In a study, previously submitted to the Commission, Doug Gomery, professor of media economics and history in the College of Journalism at the University of Maryland found that cable news channels are limited to the top 25 markets and rarely obtain shares of the audience above 2 percent.[26]

Although developing technologies have made possible new media outlet forms, these new media outlets are simply not yet used as a news and information source by a significant number of Americans and cannot be seen as voices equal to the traditional radio, television and newspaper outlets for purposes of evaluating diversity of viewpoints in the marketplace.

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[24] Comments of Consumers Union, Consumer Federation of America, Civil Rights Forum, Center for Digital Democracy, Leadership Conference on Civil Rights and Media Access Project, *In the Matter of Cross-Ownership of Broadcast Stations and Newspapers; Newspaper/Radio Cross-Ownership Waiver Policy*, MM Docket No. 01-235, MM Docket No. 96-197, December 3, 2001. ("CU et al")

[25] *Id.,* 91ff.

[26] Douglas Gomery, *The FCC's Newspaper-Broadcast Cross-Ownership Rule: An Analysis,* Washington, D.C., Economic Policy Institute, February 15, 2001, 5. See also AFL-CIO NBCO Reply Comments, Attachment A.

### 4. The New Media Outlets Are Controlled by the Same Media Conglomerates That Control the Traditional Media

Finally, the available evidence makes clear that not only do these new media outlets represent limited market shares, they also cannot be deemed to be distinct voices in the marketplace because they are owned and controlled by the same media conglomerates that control radio, television, and newspapers.

A local cable news network or Internet site is not a different voice when in fact it is owned and its content is provided by the local newspaper or TV station. The top two cable system owners, AT&T and AOL Time Warner have over 27 million subscribers, accounting for 40 percent of all cable households. Two companies control the direct-broadcast satellite market. The five broadcasting networks also dominate cable programming (ABC, Viacom, AOL Time Warner, GE, and News Corp.)[27]

In sum, because of their limited audience and market share and because they are largely owned and controlled by the same conglomerates that own the dominant media of television, radio and newspapers, these new outlets simply cannot be taken into account when evaluating the number of voices in a media marketplace, particularly for the delivery of news and public affairs information. The simple fact of the multiplicity of these new outlets should not be considered evidence of viewpoint diversity in the Commission's consideration of the continued importance of broadcast ownership limits.

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[27] Dean Alger, *Megamedia*, Lanham, MD: Rowman & Littlefield Publishers, Inc.,1998, 91.

## B. Ownership Matters for Viewpoint Diversity

### 1. Media Concentration has a Negative Impact on Journalistic and Programming Content and Quality

The impact of media concentration on journalistic and programming content and quality are of great concern to the AFL-CIO's affiliate unions. The wealth of anecdotal and other evidence shows that concentrated media ownership affects content and that this effect is negative. Unfortunately, the two Commission-sponsored studies designed to test whether ownership impacts viewpoint and content of media—D. Pritchard (2002) "Viewpoint Diversity in Cross-Owned Newspaper and Television Stations: A Study of News Coverage of the 2000 Presidential Campaign" (Study #2), and T. Spavins, L. Denison, S. Roberts, and J. Frenette (2002) "The Measurement of Local Television News and Public Affairs Programs" (Study #7)—are seriously flawed in their methodologies and do not provide much evidence relevant to this important issue.

**a. The Flaws of the Pritchard Study.** Pritchard reviewed the coverage of the 2000 election by ten co-owned newspapers and television stations to test whether cross-ownership is likely to lead to homogenization of viewpoints. The study reported that of the ten combinations reviewed, five had a common slant and five had different slants. As Baker explains in his report, Pritchard's study is flawed because it does not compare the election coverage of combined operations with the coverage of a reference group of independent newspapers and television that are not part of combinations.[28] It is possible that the news events may objectively have led one candidate or the other to be portrayed in a negative or positive manner. Therefore, in order to determine bias, as opposed to slant, Pritchard should have compared the difference in slant between the cross-owned outlets with a reference group of newspapers and television stations that were not commonly owned.[29]

A second design problem stems from the news issue examined. Baker notes that the "presidential race is actually not an especially likely place for the owner of a news outlet to exert heavy handed control, especially one as close as the 2000 race [because] the outlet owners had to be largely reconciled to the possibility that their favored candidate might lose. The owners of the outlets had to be prepared to operate profitably regardless of which candidate won the election. Heavy handed coverage on behalf of the losing candidate would not obviously advance this goal."[30]

Moreover, even though Pritchard states that he selected the 2000 presidential race because the race was close and the media combinations would have "reasonably hoped" to have been able to influence the outcome, he in fact chose to review media combinations located in states where the race was not close at all. As Baker points out, 7 of the 10 combinations reviewed by Pritchard were located in states where the winner had a margin of more than 10 percentage points.[31]

Further, Pritchard's conclusion was based on a faulty review of his own limited data. On reviewing Pritchard's data, Baker found that two of the television stations reported as having a "Gore slant" actually slanted more towards Bush. Thus, Pritchard's limited data actually showed that 7 of the 10 media combinations had a common slant.

Finally, and perhaps most significant, the actions of media companies currently permitted to co-own newspaper and television properties should not be viewed as

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[28] Baker, 5-7.
[29] *Id.,* 6.
[30] *Id.,* 6.
[31] *Id.,* 7.

particularly instructive of what media companies could do in a deregulated environment, as they may feel somewhat constrained since they are operating in a context where the Commission has granted them special exemptions to a general rule. More reliable evidence is that which has been collected with respect to the current practices of media conglomerates in controlling the content and views of their media properties.

**b. The Flaws of the Spavins et al Study.** Similarly, the Spavins et al study does not provide a basis for assessing the impact of ownership concentration on news quality. Spavins et al attempted to compare the quality of local news shows on network owned stations and network affiliates by looking at viewership rates, the receipt of news awards and weekly hours of news. On the basis of these measures, the study concluded that network owned and operated stations aired more local news than did independently owned affiliate stations and produce higher quality news and programming than do affiliates.

As explained by the Network Affiliated Stations Alliance (NASA) and the National Alliance of Broadcasters (NAB) in their analysis filed with the Commission on December 9, 2002 ("NASA"),[32] when the Spavins et al data is controlled for the effects of market size, the data actually shows that there is no difference in the amount of local news aired by network owned and affiliated stations and that, in fact, network owned stations are *less likely* to win the prestigious broadcast journalism awards than are affiliated stations. In the NASA study, the researchers point out that Spavins et al did not take market size into consideration, which "affects the amount and type of news

[32] *Early Submission of the National Association of Broadcasters (NAB) and the Network Affiliated Stations Alliance (NASA)*, "The Measurement of Local Television News and Public Affairs Programs, Analysis of Media Ownership Working Group Study." Filed with FCC, December 9, 2002.

programs aired by network and affiliate owned stations."[33] NASA demonstrates that what Spavins et al's data shows is that stations in *larger markets* air more local news, on average, than stations in smaller markets (70 percent of network stations in the top 10 markets are "owned and operated" (O&O) rather than affiliates). NASA ran a regression analysis taking market size into consideration and found "no statistically significant difference between the hours of local news aired by affiliates and O&O stations."[34]

Similarly, Spavins et al's failure to take market size into account also skewed its results regarding which stations tend to win prestigious awards. NASA points out that the vast majority of the prestigious awards go to stations in the top 10 markets. NASA conducted a regression taking market size into account and found that, in fact, "network owned stations in the top 10 markets . . . were significantly *less* likely to win Dupont awards than other broadcasting stations in those same markets" (emphasis in original).

Further, NASA points out that the inclusion of the Fox network in the Spavins report skews the results. Fox, unlike the other networks, acquired most of its properties only recently and so Fox stations, which are still in transition, are, in general, more independent than the other network owed stations and Fox may have purchased certain stations based on the strength of their news operations.[35] NASA explains that when the data for Fox stations is removed from the totals, the correlative results are quite different, with Fox stations airing more local news than the other network O&O's.[36]

Baker similarly points out basic methodological problems with the Spavins et al study. Consistent with NASA's observations about the problem with including Fox

[33] *Id.,* 1.
[34] *Id.,* 6.
[35] *Id.,* 4.
[36] *Id.*

owned stations in the category of network stations, Baker notes that the more relevant question for the study would have been to assess how the quality of news coverage on both network owned stations and affiliates have changed over time. He states that stations bought by networks or newspapers (such as the recent acquisitions by Fox) may have always had better news coverage than their competitor stations, with the quality of their newscasts having more to do with age and history rather than with network ownership.

**c. Other Studies Show Adverse Affects on News and Programming Quality.** The results of other studies and surveys do, however, provide a wealth of relevant data on how media consolidation adversely affects the quality of news and other local programming.

For example, the findings in Levy et al. (Study # 12), showed a fall-off in the growth of educational television stations that far exceeded the fall in all television stations over the last ten years (see above). Indeed, there has been zero growth in educational broadcast television since 1995. This is just one manifestation of how growing media concentration affects media content and quality. "Clearly," Baker concludes, "education has become a less important function in television in the last decade."[37]

Also, in M. Einstein (2002) "Program Diversity and the Program Selection Process on Broadcast Network Television" (Study # 5), Part II, the researchers note that an appeal to advertisers is now an explicit consideration in the production of television programs, which can certainly have an adverse effect on news reporting and other programming.

Academic studies and surveys of working journalists further document what common sense knows is true: media ownership influences editorial voice. Professor C. Edwin Baker, then of the Shorenstein Center at Harvard, reviewed the academic literature on the impact of newspaper chain ownership on content, profit orientation, and news quality. One study found that after Southam Press bought the Canadian *Windsor Star,* the *Star* greatly increased its reliance on the chain's news service for its front-page leads, leading to greater uniformity in news in the chain's newspapers. Another study of Gannett newspapers found that they were more likely to take editorial positions and were much more homogeneous in the positions they took compared to non-chain papers.[38] A survey of journalists by the Pew Research Center reported that almost half (48 percent) of all local news staff—and a majority of African-American journalists—believe corporate executives exert either a fair amount or a great deal of influence over news content.[39]

The wall between the business and editorial side of many newspapers is eroding, if not breaking down entirely.[40] The most recent and notorious example occurred in 1999 when the *Los Angeles Times* struck a deal with the Staples office supply company to publish a section of the newspaper about a Staples-sponsored new downtown sports arena, sharing advertising revenue with Staples. This cross-over of journalistic independence took place within the context of a mandate from Times Mirror, the *Los Angeles Times'* corporate parents, for "closer cooperation" between the news and business departments at the newspaper.[41] A few years ago, when the editor of Knight

[37] Baker, 21.
[38] Alger, 180-181
[39] Pew Research Center for The People & The Press, *Striking the Balance: Audience Interests, Business Pressures and Journalists' Values,* nd. 21.
[40] Leonard Downie Jr. and Robert G. Kaiser, *The News about the News*: *American Journalism in Peril*, New York: Alfred A. Knopf, 2002, 241.
[41] Downie and Kaiser, 245.

Ridder's paper in Columbia, South Carolina disagreed with his publisher about the direction of local coverage, he was told "dissent was not in his job description." Similarly, Gannett sent a memo to its editors stating: "The publisher is responsible for the entire newspaper, including the quality of the news report."[42] This attitude was succinctly expressed by former GE CEO Jack Welch after GE bought NBC, when he bluntly told the news chief: "You work for GE."[43]

Corporate owners are increasingly pressuring their local TV stations to improve their profit margins, which are largely dependent on maintaining advertisement revenues. These pressures can affect the ability of local news stations to maintain their journalistic independence. Local TV news directors are pressured to tailor their news programming to satisfy large local advertisers. The Project on Excellence in Journalism, an affiliate of the Columbia University Graduate School of Journalism, found in its survey of 118 news directors around the country that 53 percent reported that advertisers pressure them to kill negative stories or run positive ones. The survey also found that news directors believe that the wall between sales and news is getting harder to maintain, and sales are having more and more influence on newscasts. Almost one in five news directors—especially in smaller markets—say that their sponsors try to prevent them from covering stories. One quarter of news directors in small markets report that they have been pressured to censor their news. The report concludes that "the findings and comments (in the survey) raise questions about the journalistic independence of local television news."[44]

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[42] Thomas Kunkel and Gene Roberts, "Leaving Readers Behind: The Age of Corporate Newspapering." Vol. 23 No. 4 *American Journalism Review* (May 1, 2001), 39.
[43] Quoted in Alger, 169.
[44] Marion Just and Rosalind Levine, "News For Sale." Special Report: Local TV News, *Columbia Journalism Review/Project on Excellence in Journalism* (November/December 2001), 2-3

As Ben Bagdikian explains, most intervention by owners "is subtle, some not even occurring at a conscious level, as when subordinates learn by habit to conform to owners' ideas."[45] The result is a tendency by editors and journalists in local markets to practice various degrees of self-censorship in the way they choose sources, write or edit their stories, or make editorial commentary. Sometimes, conflicts do surface. Thus, Bagdikian notes:

> Every year there is a 'distressing list' of reporters and editors of newspapers and magazines who are fired or demoted because they stumbled on the private politics of the owners, or a list of television producers and writers who make professionally competent decisions that run counter to the politics of the corporation. Even when such firings and demotions are clear interventions of corporate politics into the editorial process, the worst damage is not in one particular incident but in the long-standing aftermath in which working professionals at the editorial level behave as though under orders from above, although no explicit orders have been given.[46]

Among the "distressing list of reporters and editors" called to task because their reporting conflicted with owners' economic interests was Pulitzer winner Sydney Schanberg, whose column in *The New York Times* was canceled for criticizing the press for ignoring a major real estate scandal in New York.[47] Others acquiesce. The publisher of Hearst's *San Francisco Examiner* promised to stem his paper's criticism of Mayor Willie Brown if the mayor didn't oppose Hearst's takeover of the rival *Chronicle.*[48] The *Los Angeles Times* failed to report a controversial real estate and recreational project that benefited the *Times'* parent, *Times-Mirror*, although the story was reported by other papers including *The New York Times* and *The Bakersfield Californian.*[49]

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[45] Ben Bagdikian, *The Media Monopoly,* Boston: Beacon Press, 6th edition, 2000, 45
[46] *Id.,* 36-37.
[47] Northwest Passage Productions in association with KTEH, "Fear and Favor in the Newsroom." Description of the documentary is available at http://www.fearandfavor.org.
[48] Kunkel and Roberts, 36.
[49] Bagdikian, 39-41.

It is undeniable that media ownership influences, shapes and controls the content and quality of news and other programming delivered to the public to a degree and in a manner clearly at odds with the public interest.

### 2. Media Concentration Reduces Coverage of Concern To Minority Communities and Can Limit and Bias Public Interest and Political Reporting

Viewpoint diversity and localism have also been hurt by media consolidation in that media conglomerates that control editorial voice and content have reduced coverage on issues of interest to minority communities.

It has been well documented in studies and reports previously submitted to the Commission, that minority ownership of media outlets results in increased coverage of issues of concern to minority communities.[50] In light of these findings, the current miniscule amount *and* declining level of minority-owned media raises concerns that ethnic and racial minority communities are not well served by our media industries. It is very likely that if the ownership rules are eliminated or weakened, the mostly small and family-owned minority media businesses will be driven out by the large industrial media giants, resulting in significantly greater reductions in media voices that reflect minority tastes and needs.

Corporate dominance of local media markets also has added to the general reduction of public interest reporting, for example of consumer issues, which run counter

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[50] Joel Waldfogel, "Comments on Consolidation and Localism," Statement for *FCC Roundtable on Media Ownership Policies* (October 29, 2001); Peter Siegelman and Joel Waldfogel, "Race and Radio: Preference Externalities, Minority Ownership and the Provision of Programming to Minorities," Attachment to *Statement for FCC Roundtable on Media Ownership Policies*; Joel Waldfogel, "Preference Externalities: An Empirical Study of Who Benefits Whom in Differentiated Product Markets," *NBER Working Paper 7391* (October 1999); Lisa George and Joel Waldfogel, "Who Benefits Whom in Daily Newspaper Markets?" *NBER Working Paper 7944* (October 2000); Felix Olberhozer-Gee and Joel Waldfogel,

to the media conglomerates' economic self interest.[51] The AFL-CIO is especially concerned about the neglect of labor issues, and sometime the outright refusal to air ads paid for by labor organizations because they might antagonize advertisers. Media coverage of union and workers' issues has declined precipitously over the past several decades. This includes a dramatic drop in the number of labor editors, and a finding by the media watchdog group, Fairness and Accuracy in Reporting (FAIR) that the evening news programs of CBS, ABC and NBC recently devoted only two percent of their total air time to workers' issues, including child care, the minimum wage and workplace health and safety.[52]

There are a number of reported instances in which local media refused to run ads paid by labor organization because the ads threatened corporate ownership interests. Ben Bagdikian recounts an early example in which the *Chicago Sun-Times,* owned by Marshall Field Enterprises, refused to run ads from the Amalgamated Clothing Workers explaining why the union was picketing the Marshall Fields Department store.[53] The CWA also has documented numerous recent examples in which local media outlets have rejected CWA ads designed to educate the public about a labor dispute.[54] These stories underscore the importance of a multitude of media outlets under diverse ownership in a local market, so that an organization spurned by one outlet has an alternative.

The Commission's studies do not address or add any new information or insights into these important issues. Although Baker notes that the Einstein study (Study #5)

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"Electoral Acceleration: The Affect of Minority Population on Minority Voter Turnout," *NBER Working Paper 8252* (April 2001).

[51] See Alger, 165.

[52] Cited in Matt Witt, "As media turn away, the working class has become all but invisible," *The Guild Reporter,* October 22, 1999, pp.4-5. See also Frank Swoboda, "Labor coverage? Forget about it!" *The Guild Reporter,* October 22, 1999, 4-5.

[53] Bagdikian, 42.

finds that appeal to advertisers is now an explicit consideration in the production of television programs, he also notes that none of the Commission's studies even attempts to directly examines how commercial interests of the media outlets or their advertisers can affect the content of their news and entertainment.[55] Baker also points out that the studies failed to consider the extent to which ownership concentration could affect the ability of various interest or political groups to reach a wider public with their view, as suggested by the examples above. "This is an important issue in a democracy," he states, "since the media is the primary means available for any organization to reach a large audience with their views."[56]

## III. MEDIA OWNERSHIP CONCENTRATION HURTS LOCALISM BY UNDERCUTTING LOCAL NEWS COVERAGE AND LOCAL PROGRAMMING

In the *NPRM*, the Commission states it that has historically pursued policies aimed at encouraging localism. From the earliest days of broadcasting, it asserts, "federal regulation has sought to foster the provision of programming that meets local communities' needs and interests." It notes that one statutory basis of its promotion of localism in broadcasting is Section 307 of the 1934 Act, which dates from the Radio Act of 1927 . The Congressional Findings and Policy in connection with the Cable Television Consumer Protection and Competition Act of 1992, also supports this position. It includes the finding that "[a] primary objective and benefit of our nation's system of regulation of broadcast television is the local origination of programming."[57]

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[54] These are summarized in AFL-CIO NBCO Reply Comments, 19.
[55] Baker, 22.
[56] *Id.,* 23.
[57] *NPRM,* ¶69

The Commission then asks a series of questions aimed at assessing the extent to which media ownership influences local media programming and news coverage. For example, it asks: Do ownership limits tend to ensure an adequate supply of local information intended to meet local needs and interests? Is such news, public affairs, and other programming likely to be available in the current marketplace without ownership limits? To what extent do consumers' access to local news and information on non-broadcast media (*e.g.,* newspapers, cable television, DBS, and the Internet) impact this analysis? How much local news and information is available on a typical cable system and on the Internet, other than news that originates on broadcast stations?

Print and broadcast journalists represented by AFL-CIO unions know that corporate media ownership, particularly where it is very concentrated in markets, can interfere with their ability to report broadly, widely, critically, and from antagonistic viewpoints. As media professionals, maintaining local identity is a fundamental principle of quality journalism and responsible media.[58] Specifically, journalists should be encouraged to preserve the identity and values of local communities, and to disseminate the views, values, and information that are important to the various groups within the local community, as well as educate communities about national and global perspectives.

In part, the discussion on substitutability and diversity above addresses some of the issues on localism raised by the Commission. As noted, the evidence indicates that there is weak substitutability of media sources of news, especially at the local level. In their comments to the Commission on newspaper/broadcast cross-ownership both the

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[58] See AFL-CIO NBCO Reply Comments, 2. The other four "principals of quality journalism and responsible media" include "diversity," "just and respectful employment practices," "comprehensive coverage," and "financial arrangements that enhance and support the other principals of quality journalism."

AFL-CIO and the consumer commentators have provided to the Commission a great deal of evidence that media concentration has put pressure on local newspapers and broadcast stations to reduce their costs and increase profits, with adverse consequences for local news coverage. In an important speech to the American Society of Newspaper Editors, former *San Jose-Mercury News* editor Jay Harris described how the pressure from Knight-Ridder corporate offices to meet constantly rising profit targets forced him to cut staff so sharply that he could no longer produce a quality newspaper. He quit instead. As he told the annual meeting of newspaper editors: "The drive for ever-increasing profits is pulling quality down."[59]

The impact of these pressures to meet super-high profit margins on print and broadcast news and information programming is also well-documented: editors must cut staff and local news.[60] In Asbury Park, N.J., Des Moines, Ia., Louisville, Ky., Long Beach, Ca., and in numerous communities across the United States, editors have been forced to cut local reporting after to meet these profit margins after newspaper chains bought local newspapers.[61] News and public affairs programming suffers. More than

[59] Jay Harris speech to American Society of Newspaper Editors, April 6, 2001 as reprinted in *The Guild Reporter,* April 20, 2001, available at www.newsguild.org.

[60] Downie and Kaiser, 78-79 and 174-5.

[61] For example, when Gannett purchased the *Asbury Park Press*, New Jersey's second-largest paper, in 1997, the newly appointed publisher slashed the newsroom staff from 240 to 185. The *Press*, once considered one of the most enterprising independent papers in the nation, experienced an exodus of its most talented people, shortened stories, de-emphasized government news and more trivialized local news, See Kunkel and Roberts. Similarly, a *Columbia Journalism Review* study of the decline in news quality after Gannett takeovers of the *Des Moines Register* and the *Louisville Courier-Journal* found that at both papers, after the initial years of the chain's ownership, the new leadership severed the last major links to family ownership and required greater obedience to the parent corporation. The *Courier-Journal,* which had a history of quality before being absorbed by Gannett, had five fewer general-assignment reporters in late 1997 than in 1990. Some of the papers' employees in interviews complained of Gannett's "revolving-door system of executive advancement," whereby editors, chief editors and publishers are frequently transferred to other papers in the chain, making it difficult to stay anywhere long enough to understand the communities they are in or develop a loyalty or affection for them. When editors or publishers do not understand an area and are not generally involved in or committed to it, they cannot provide the news leadership the community deserves. See Sig Gissler, "What Happens When Gannett Takes Over," *Columbia Journalism Review,* November-December, 1997, 42-45 as cited in Alger,170-171.

half of all TV stations surveyed by the Project on Excellence in Journalism reported budget cuts or layoffs last year.[62] As a result, newspapers and TV stations are cutting back on coverage of local events, local government, and investigative reporting.[63]

To cut costs, local news outlets increasingly rely on stories and resources fed to them by distant corporate owners. Some radio stations have carried this to the extreme. At a recent media conference, a journalism instructor from rural South Carolina asked a radio corporation panelist what he could do about making weather warnings available at one of the company's small town stations. During the last tornado, it was impossible for the people in the town to find out the location and track of the dangerous storm on their single local radio outlet because all of its programming was delivered from Atlanta, Georgia. There was literally no local weather information during that crisis.[64]

Further, as the highly-regarded former editor of the *Philadelphia Inquirer* Gene Roberts and the Dean of the University of Maryland College of Journalism, Thomas Kunkel, concluded after a two-year exhaustive study of the state of American journalism:

> In the newspaper industry, consolidation—in tandem with the chains' desperation to maintain unrealistic profit levels (most of these big companies now being publicly traded)—is actually *reducing* the amount of real news being gathered and disseminated, most conspicuously at the local and state levels, where consumers need it most. This is because consolidation has resulted in far fewer news outlets, and the economic pressures have resulted in fewer reporters with fewer inches in the paper to say anything.[65]

In their comments to the Commission on cross-ownership, Mid-West Family Stations ("Mid-West"), a group of related companies which operate 37 radio stations in

[62] Marion Just, Rosalind Levine and Todd Belt. "Thinner, Cheaper, Longer." Special Report: Local TV News, *Columbia Journalism Review/Project on Excellence in Journalism* (November/December 2001). 12-13.
[63] Project on the State of the American Newspaper, Kunkel and Roberts, *id*.; Brady, Lee Ann and Atiba Pertilla. "The Look of Local News." Special Report: Local TV News, *Columbia Journalism Review*/Project on Excellence in Journalism (November/December 2001), 11-12.
[64] TNG-CWA, "The Newspaper Build-CWA In a Multi-Media World," Feb. 2002 (mimeo), 5.

20 midwestern communities, provide an example of how radio/newspaper cross-ownership "simply serve(s) as a cross-promotional vehicle rather than as an independent editorial voice." It also provides an example of how media concentration at the local level fostered by cross-ownership can compromise the local editorial process and news coverage. In Madison, WI, where three radio station group owners and their affiliates account for the vast majority of the radio market, "such skewing of the editorial process is already taking place."

For example, the local daily newspaper monopoly recently sponsored a local blues music festival, an event that conflicted with a music and food festival sponsored by the Greater Madison Convention & Visitors Bureau. The newspaper did not cover the food and music event that did not carry its logo, although it was an important event sponsored by a major civic organization. Mid-West concludes that "[i]f this publisher had also owned a significant segment of the local radio market, one might imagine that many people in the community would have had little chance to learn about all of the event in that community, especially events that compete with those sponsored by the combined media entity. The flow of community information would be seriously compromised by an exercise of market power, control and dominance. Such an outcome is not in the public interest."[66]

Similarly, Gomery cites a study of the Zanesville, Ohio media market in the 1970s where the only newspaper, radio station, and television station were under common ownership. The residents of Zanesville used the news media less, and were less

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[65] Kunkel and Roberts, 36.

[66] Comments of the Mid-West Family Stations, *In the Matter of Cross-Ownership of Broadcast Stations and Newspaper; Newspaper/Radio Cross-Ownership Waiver Policy,* MM Docket No. 01-235, MM Docket No. 96-197, Dec. 3, 2001, 4

well informed, than residents of similarly sized cities with more media outlets.[67] In addition, when a newspaper and broadcast television station are under a single operation, more often than not it will be part of a media conglomerate with many other interests as well.[68]

Thus, there is a wealth of empirical data that is before the Commission showing the adverse effects of media consolidation on the ability of local communities to receive diverse and antagonistic viewpoints from a variety of sources and local news and public affairs information programming.

## IV. THE MEDIA OWNERSHIP RULES ARE NECESSARY TO MAINTAIN COMPETITION IN NATIONAL AND LOCAL MARKETS

The Commission's interest in competition as a policy goal appears to be based on multiple concerns. The Commission states that it has "relied on the principle that competitive markets best serve the public because such markets generally result in lower prices, higher output, more choices for buyers, and more technological progress than markets that are less competitive. In general, "the intensity of competition in a given market is directly related to the number of independent firms that compete for the patronage of consumers."[69] The *NPRM* stresses, however, that section 202(h) requires the Commission to consider whether any of its ownership rules are "necessary in the public interest as a result of competition." It asks whether the proliferation of outlets over the past years provides sufficient competition that the "market will protect and advance competition without regulatory requirements." "What effects, if any," it

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[67] G. Stempel, "TV Station Group Ownership, and Cross-Media Monopoly." *Journalism Quarterly* 72(2) 1973: 10-28. Cited in Gomery, 7
[68] Gomery, 8-9.

continues, "do these outlets have on our objective to promote competition and the means by which we can best achieve this goal?" It similarly asks if "competition is an appropriate proxy for diversity, such that the presence of a competitive local market will assuage our concerns about diversity?"[70]

As discussed above, there is overwhelming empirical and anecdotal evidence that the mere proliferation in the number of media outlets is not sufficient for ascertaining the extent of true media competition that is necessary to preserve diverse, antagonistic voices in the media. Further, the evidence is clear that local and national media markets are already highly concentrated, which raises the risk of anti-competitive business practices, such as are discussed with reference to what has occurred in the radio industry (see above).

The Commission is also concerned with the competition issue as it pertains to the advertising market.[71] The Commission-sponsored study, B. Cunningham and P. Alexander (2002) "A Theory of Broadcast Media Concentration and Commercial Advertising" (Study #6), presents a theoretical model to predict the impact of greater concentration in broadcast media. In particular, it looks at the relationship between consumption of broadcast material and broadcasting time devoted to advertising, in the context of increasing ownership concentration. Baker concludes, in his careful assessment of this model, that the "study implies that the consumption of broadcast material will fall as concentration increases, and that advertisers will pay higher rates."[72] Data collected in Williams and Roberts (2002, Study #11) and K. Brown and G. Williams

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[69] *NPRM,* ¶52.
[70] Id., ¶46.
[71] *Id.,* ¶59.
[72] Baker, 4.

(2002) "Consolidation and Advertising Prices in Local Radio Markets" (Study #4) are consistent with this conclusion. For example, Williams and Roberts found that adjusted for inflation, the cost of radio advertising has risen by more than 60 percent since 1996. This sharp rise in advertising, Baker notes, is consistent with the increased concentration in the radio industry since the change of radio ownership rules.[73]

Similarly, Brown and Williams examined the relationship between radio advertising prices and market prices and found that the real (inflation adjusted) cost of radio advertising rose by 68 percent after the 1996 repeal of station ownership limits. Although the authors attempt to argue that only 3 to 4 percent of this increase can actually be attributed to the growing concentration in the industry with the rest of the increase attributable to economic growth, Baker refutes this explanation. Baker states that: "the finding that income growth was the main factor behind the sharp surge in ad prices following the relaxation of ownership rules seems implausible on its face." Baker reports that prior research has established that while radio prices fell over the entire period from 1961 to 1994, this was also a period of sustained economic growth. During this period, network radio ad prices fell by an average of 1.27 percent annually and spot radio ad prices fell an average of 0.8 percent annually. Yet, over this same period the economy grew by 202.1 percent. Baker thus concludes that:

> If growth explains the increase in ad prices, then it should have also led to sharp increases in ad prices in the three decades prior to the removal of these rules. The fact that growth was instead associated with falling ad prices over this period indicates that economic growth is probably not the explanation for the rise in ad prices since ownership rules were relaxed.[74]

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[73] *Id.,* 17-18.
[74] *Id.,* 19.

The Commission should be very concerned with the effect on advertising rates because such rate increases are invariably passed on to consumers in the form of higher prices. Further, anti-competitive pricing in the advertising market can affect programming because such pressures will compel companies to force stations to influence and change programming to appeal to advertisers. As noted above, Einstein (Study #5) observes that an appeal to advertisers is an explicit factor in television programming.

In short, the AFL-CIO submits that media competition, along with diversity and localism, is suffering under the weight of the media consolidation that has already occurred, and will only worsen with further deregulation of the remaining ownership controls.

## V. THE REMAINING LOCAL OWNERSHIP RULES SHOULD BE MAINTAINED

### A. The Commission Should Retain The Newspaper-Broadcast Cross-Ownership Rule Because It Remains Necessary To Promote Diversity And Competition In Local News And Information

In this proceeding, the Commission seeks additional comment on the newspaper/broadcast cross-ownership rule, specifically as it relates to the Commission's other local ownership rules.[75] In the original newspaper/broadcast cross-ownership proceeding, the AFL-CIO filed comments arguing that the rule should be continued in order to ensure diversity, competition, and localism in the provision of news and

[75] *NPRM*, ¶8. The other local ownership rules are the local TV ownership rule, the radio/TV cross-ownership rule, and the local radio ownership rule.

information to local communities.[76] The AFL-CIO comments in the newspaper/ broadcast proceeding are incorporated into the record in the current proceeding.

A structural rule that bars common ownership of a newspaper and television station in the same market is as important today as it was in 1975 when the rule was first adopted. As the Commission states in the *NPRM*, the purpose of its local ownership rules, including the newspaper/broadcast cross-ownership rule, is to "foster competition and diversity in the local media marketplace."[77] As the Supreme Court noted in its 1978 decision upholding the newspaper/broadcast cross-ownership rule, "it is unrealistic to expect true diversity from a commonly-owned station-newspaper combination. The divergence in their viewpoints cannot be expected to be the same as if they were antagonistically run."[78] Most recently, in the *Sinclair* decision, the U.S. Court of Appeals upheld the Commission's judgment that common ownership reduces diversity.[79]

### 1. Newspapers and Television Continue to be the Primary Sources for News and Information to Local Communities

As was true fifty years ago, most Americans still get their local news and information from their daily newspaper and one of a handful of broadcast television stations. As Waldfogel (Study # 3) reports, more than 60 percent of Americans watch network and local news on broadcast television and about 62 percent of Americans read a daily newspaper.[80] Newspapers and television newscasts serve a unique role for the

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[76] *See* Comments of the American Federation of Labor and Congress of Industrial Organizations, *In the Matter of Cross Ownership of Broadcast Stations and Newspapers; Newspaper/Radio Cross-Ownership Waiver Policy,* MM Docket No. 01-235 and MM Docket No. 96-197, Dec. 10, 2001 ("AFL-CIO NBCO Comments"); AFL-CIO NBCO Reply Comments.
[77] *NPRM*, ¶8.
[78] *FCC v. National Citizens Committee for Broadcasting,* 436 U.S. 775, 779 (1978) ("*NCCB*").
[79] *Sinclair Broadcasting Group v FCC,* 284 F.3d 148, 161 (D.C. Circuit 2002) (*"Sinclair").*
[80] Waldfogel, Tables II3 (television news) and I1 (newspaper). This data is based on survey data collected by Scarborough Research, 1999-2000 on media usage of 180,000 respondents in 66 large markets.

American public. Newspapers provide in-depth reporting and analysis and they are the only media whose primary focus is news, not entertainment. Television dominates in political news and political advertising, provides breaking news, and conveys the immediacy and emotional impact of its visual images.

No other medium compares in audience reach or advertising dollars. Cable news shows are limited to the top 25 markets and, where available, reach no more than two percent of the audience.[81] The Internet is primarily a distribution mechanism for content from non-local news sources, or content provided by the local newspaper or local television station.[82] Moreover, since only half the population has an Internet connection at home, the Internet as a news outlet is not available to half of all Americans, and fewer for low-income people earning less than $15,000 a year (25 percent), non-college educated (12.8 percent), Blacks (39.8 percent), and Hispanics (31.6 percent).[83]

Although, as previously noted, much of the data contained in Nielsen Research Group (Study #8) was of very limited value as it solicited what respondents thought that they might do in the future, the study did contain some very important data on the public's *actual* and *current media usage*, which demonstrates how important newspapers and broadcast television are to the general public.

In the Nielsen study, 84.8 percent of respondents identified television and 62.8 percent identified newspaper as a source for news and information in the past seven days.[84] No other media outlet comes close to this penetration level for local news and

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[81] Gomery, 5.
[82] Gomery, 6-8.
[83] U.S. Department of Commerce, National Telecommunications and Information Administration, *A National Online: How Americans are Expanding Their Use of the Internet*, Feb. 2002, Table 2-2, pp.26-27. The report is based on Sept. 2001 Census Bureau Current Population Survey data (available at (http://www.ntia.doc.gov/ntiahome/dn/anationonline2.pdf).
[84] Nielsen, Table 001.

information. Further, where consumers identified the Internet as their source of news, the sites mentioned were national rather than local in scope and perspective. Similarly, where consumers cited cable television as their source of news, the channels most frequently noted provided only national, not local news (i.e., CNN (57 percent), Fox (27.1 percent), MSNBC (16.5 percent), CNBC (5.1 percent), Headline News (5.9 percent), and local cable news channel (10.8 percent).[85]

In sum, the evidence demonstrates that television and newspapers dominate in the local news and information market despite the growth of cable and the Internet. The fact that half of all Americans, and significantly larger percentages among certain demographic groups, do not have Internet connections at home underscores the continuing importance of the two mass medium, television and newspaper, for the dissemination of local news and information.

### 2. Permitting the Common Ownership of Newspapers and Television Stations in a Local Market Would Reduce Viewpoint Diversity Because Ownership In These Markets Is Already Highly Concentrated and the Public Does Not Substitute Between Media For News

Preserving the prohibition against the common ownership of newspapers and television stations in local markets is critical for maintaining diversity in the delivery of local news and programming to the public not only because of the uniquely important role these media outlets play in the delivery of news to the public as discussed above, but

[85] The Nielsen data is somewhat contradictory on local cable news viewership. While 58 percent say that have watched cable or satellite news channels for local news and current affairs (Table 008), a later question reveals that in fact only about one-third view local cable channels. When cable news viewers were asked to identify which cable channels they watch for news and current affairs (Table 018), only 27.1 percent identify the Fox News Channel (which we presume is largely local cable news programming) and only 10.8 percent identify a local cable news channel among their sources. The other two-thirds appear to tune in to national cable news (CNN, CNBC, MSNBC, and others). Nielsen, Table 001 (radio, Internet), Table 008 (cable), Table 018 (cable channels) and Table 019 (Internet web sites).

because there are already few voices in local markets for these outlets and, as shown, the public does not receive diverse viewpoints through other media.

The available empirical data shows that citizens in most local communities already have very limited access to newspapers and broadcast television stations in local markets.

Newspapers: The empirical data in the newspaper/broadcast cross-ownership proceeding reveals how concentrated the ownership of newspapers is presently in local markets. In 1999, there was an average of 3.11 newspapers in the nine largest metropolitan areas with more than 1 million population, an average of 1.82 newspapers in the 17 medium-sized markets with population between 500,000 to one-million, and one newspaper or fewer in the remaining 1,168 communities.[86] Thus, most Americans have access to only one or two daily newspapers.

Although Waldfogel (Study # 3) appears to suggest the existence of far more local newspapers per local market, there are several problems in the methodology used in this study. Using the Burrelle's Media Directory, Waldfogel estimated an average of 7.85 daily newspaper outlets in the 210 DMAs listed in this directory.[87] This study overcounts the number of diverse news sources in a local area for a number of reasons. First, the DMA is much larger than the reading area covered by a metropolitan daily. Second, the study counts each suburban newspaper as a separate count, although readers in County A are not likely to read the daily suburban paper in Counties B, C, D, or E. In addition, many of these suburban newspapers are commonly-owned, and do not serve as distinct news voices.

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[86] CU et al, 86.
[87] Waldfogel, Table 6, Part I, 52.

The more appropriate methodology to count the number of diverse newspaper options in local communities would be to look at the number of daily newspapers in the major metropolitan city in the DMA, and then to calculate their market share (based on circulation and advertising dollars). Consumer Federation of America research director Dr. Mark Cooper did such a calculation for the 68 largest DMAs. Cooper found that 39 DMAs (57 percent of the markets) were one newspaper towns, 12 DMAs (18 percent) were two newspaper towns, and 12 DMAs (18 percent) had three to five newspapers.[88]

Broadcast Television. Similarly, most Americans have access to only three or four broadcast television newscasts. The local affiliates of NBC, CBS, ABC, and Fox are the local news broadcasters of record. Behind today's seeming plethora of television choices are five conglomerates: Disney (which owns ABC), Viacom (CBS and United Paramount Network [UPN]), AOL Time Warner (The WB), News Corporation (Fox), and General Electric (NBC).[89] Since relaxation of television ownership limits, the number of entities owning commercial TV stations has dropped from 543 in 1995 to only 350.[90]

In the newspaper/broadcast cross-ownership proceeding, the United Church of Christ (UCC) et al conducted a study of 10 local television markets of various sizes. (See Table below.) The UCC study found that in all markets, including the two largest television markets of New York City and Los Angeles, the top four television stations control more than 75 percent of the market, measured by viewership over the twelve-

[88] Mark Cooper, Consumer Federation of America, Consumers Union, Center for Digital Democracy, Media Access Project, Democratic Discourse in the Digital Information Age: Legal Principles and Economic Challenges at the Millenium, December 2002 ("Cooper 2002"), 88.
[89] Gomery, 5, 9-10.
[90] *Notice of Proposed Rulemaking,* In the Matter of Cross-Ownership of Broadcast Stations and Newspapers, MM Docket No. 01-235; and Newspaper/Radio Cross-Ownership Waiver Policy, MM Docket No. 96-197. September 20, 2001 (Rel.) ("Cross-Ownership *NPRM*").

month period. In four of the markets, the top four stations had more than 90 percent of the market, and in three markets, the top four stations had 100 percent of the market.

| Concentration in Local Television Markets – 2001 | | |
|---|---|---|
| DMA - Rank in () | Market Share of Top Four Television Stations | HHI |
| New York City (1) | 78% | 1791 |
| Los Angeles (2) | 71% | 1636 |
| Charlotte, NC (28) | 88% | 2335 |
| Birmingham, AL (39) | 96% | 2396 |
| Lexington, KY (66) | 100% | 2974 |
| Tyler, TX. (108) | 97% | 4345 |
| Portland, ME. (79) | 94% | 2570 |
| Fargo, ND (120) | 99% | 2681 |
| Billings, MT (169) | 100% | 3126 |
| Rapid City, SD (175) | 100% | 3410 |
| Source: Office of Communication, Inc. of the United Church of Christ, National Organization of Women and Media Alliance, Newspaper/Broadcast Cross-Ownership proceeding, Dec. 3, 2001. | | |

According to U.S. Department of Justice HHI concentration measures, 8 of the 10 markets were highly concentrated and two markets (New York City and Los Angeles, the two largest media markets in the country) were moderately concentrated.[91] (The DOJ considers a market highly concentrated if the HHI is over 1800, and moderately concentrated if the HHI is between 1000 and 1800. An HHI under 1000 is considered an unconcentrated market.)[92] Cooper calculated the market share for 210 television DMAs and found that 26 are monopolies, 56 are duopolies, 112 are highly concentrated, and 16 are moderately concentrated.[93]

[91] See UCC et al.
[92] U.S. Department of Justice and the Federal Trade Commission, Horizontal Merger Guidelines, April 8, 1997 (revised).
[93] Cooper 2002, 120.

In sum, the monopoly daily newspaper and a handful of television stations dominate the local media market. Further, as the Waldfogel (Study # 3) powerfully demonstrates (see above), there is no consumer substitution between broadcast television and newspapers and no statistically significant substitution between these critically and uniquely important media and anything else.[94] Thus, there is a very real danger inherent in encouraging even fewer voices by permitting the co-ownership of newspapers and television. As Ben Bagdikian notes:

> It is a favorite axiom of large media operators that, while they have great power, if they abuse it the public will reject them. But in order to have the power of rejection, the public needs real choices and choice is inoperative where there is monopoly, which is the case in 98 percent of the daily newspaper business, or market dominance of the few, which is the case with television and most other mass media.[95]

### 3. Commonly-owned Newspaper/Broadcast Combinations Share News Product Reducing Viewpoint Diversity

The publishers and their trade association argue that eliminating the ban would allow cross-owned properties to realize "synergies" that would provide greater resources to use to expand local news and information reporting. These "synergies," however, are not in the public interest because they mean reduced staff and shared news product among the different media properties in a local market.

In the new, cross-owned multi-media environment, many reporters are required to learn and do jobs outside their primary media, and joint reporting is becoming more common. Journalists and other media workers find themselves with additional burdens, as they are required to practice their craft in multimedia formats for which they have had

[94] Baker, 10.

little prior experience or training. Reporters who once worked just for television or for print, are now writing a TV story, writing a newspaper article on the same story, and producing an online version. Employees are required to do double and treble duty producing copy for the different media meeting continuous, rather than daily, deadlines. Newspaper photojournalists are being required to carry both still and video cameras on their assignments.[96] Often the raw material for an article written by newspaper reporters goes onto websites that almost every newspaper in the country, and probably most local television stations, now own—before a final edited version appears in print.[97]

Two of the best known examples of print-broadcast media convergence are the Tribune Co.-owned *Chicago Tribune* and Chicago television station WGN among several other media properties[98] and Media General's[99] ownership of the *Tampa Tribune*, WFLA-TV and Tampa Bay Online. Both of these combined operations now share news product resulting in the loss of independent voices in those communities.

Tribune Co. executives boast that theirs is a "content company" in which the *Chicago Tribune* and its other newspapers are used as "content factories" for online sites, local television stations and cable news outlets.[100]

Media General's convergence of Tampa, Fl. station WFLA-TV, Channel 8, and *The Tampa Tribune* goes even further. It brings together its print, television and online

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[95] Bagdikian, 8-9.
[96] Ken Auletta, "The State of the American Newspaper." *American Journalism Review* (June 1998) ("Auletta").
[97] Phone conversations with Linda Foley, president and Larkie Gildersleeve, director of research, The Newspaper Guild-Communications Workers of America, November 30/December 3, 2001.
[98] Tribune Co. properties include 4 newspapers, 16 TV stations (with shared ownership of two others), 4 radio stations, 3 local cable news networks, an educational book division, a producer and syndicator of TV programming, including Geraldo Rivera's daytime talk show, a partnership in the new WB television network, the Chicago Cubs and other new-media investments. Auletta,
[99] Media General owns 26 daily newspapers and 21 television stations in 10 states from Virginia to Mississippi (www.media-general.com).

operations under the same roof in the same building, ostensibly to make it easier to exchange stories and resources.[101] Its goal is to create a single news-gathering operation to feed print, television, and the web. Last year it reported more than 600 "acts of convergence," defined as print, broadcast and Web staff working together to report one story.[102]

Media General's comments in the newspaper/broadcast cross-ownership proceeding provides powerful examples of how it commingles its media properties in Tampa.[103] Its convergence activities began almost ten years ago, when WFLA-TV and *The Tribune* coordinated coverage of local high school football and other sports, began sharing political polling information and coordinating political coverage, and the paper's religious columnist began making on-air reports on WFLA-TV. After Media General began full convergence two years ago of its Tampa television station, newspaper and Tampa Bay Online ("TBO.com") web-site, it established a central news desk, the "Multi-Media Desk," continuously staffed by editors from all three media to facilitate "the rapid exchange of story ideas, news content, and video images among the three outlets." According to Media General,

> newspaper reporters are writing scripts for television newscasts and appearing on-air, and the newspaper has made its archives available to the other two outlets. With the provision of special equipment to the photographers of all three outlets, The Tampa Tribune and TBO.com have been able to provide stories with pictures that otherwise would have been only text, including aerial footage obtained from WFLA-TV's helicopter. Similarly, The Tampa Tribune's photojournalist have been able to provide WFLA-TV with video for airing on its newscasts. . . .

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[100] Auletta.
[101] Al Tompkins and Aly Colon, "Tampa's media trio," Vol. 130, Issue 15 *Broadcasting & Cable* (April 10, 2000)
[102] Rabasca, Lisa. "Benefits, Costs, and Convergence" *Presstime Magazine* (June 2001) (www.naa.org/presstime/0106/convergence.html).
[103] Comments of Media General, Inc., *In the Matter of Cross-Ownership of Broadcast Stations and Newspaper; Newspaper/Radio Cross-Ownership Waiver Policy,* MM Docket No. 01-235, MM Docket No. 96-197, Dec. 3, 2001 ("Media General").

> Finally, by working together, the three outlets have gained better access to political candidates and government officials. Together, they now conduct their own joint polls, hold town meetings, and organize other community events.

Media General is planning to adapt its Tampa model to five other markets in Alabama, Georgia, South Carolina, Tennessee/Virginia and Florida where it operates newspapers near television stations and has joint Web sites. Media General notes that although these operations do not have the same advantage of co-location as Tampa, "the news staffs at these co-owned properties regularly share story ideas by e-mail, fax, and telephone, and they publicize each other's news content."[104]

Media General's co-mingling of once separate and antagonistic news and information outlets undermines the First Amendment and public interest goals that are at issue in this proceeding, and demonstrate why maintenance of the rule is so important to foster the widest possible dissemination of diverse and antagonistic information.

As Kunkel and Roberts note in describing Media General's operations in Tampa:

> Under the Tampa model, news decisions for all these outlets are made in a coordinated way, sometimes in the same meeting. In effect, the same group of minds decides what 'news' is. . . .This isn't sinister, it's just not competition.[105]

Moreover, an independent study of Media General's cross-owned news operation found viewer dissatisfaction with Media General's domination of the local news market. According to Al Tompkins of the Poynter Institute, who conducted focus groups of Media General's Tampa audiences, found that WFLA-TV's viewers resented the cross-promotion of the *Tampa Tribune.* According to Tompkins,

> So far, views are not at all impressed. There's a daily drumbeat of 'look at the paper, look at the paper, look at the paper.' Viewers perceive this as selling them something, not telling them something.[106]

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[104] Media General, 6-10.
[105] Kunkel and Roberts, 36.

### 4. There is a Substantial Risk that Media Owners Will Impose Homogeneous Perspectives on Co-Owned Newspapers and Television Stations

Due to the importance of newspapers and broadcast television, it was quite correct for the Commission to seek data on the potential effect of co-ownership on the independence of newspapers and television stations. However, as discussed above, the study sponsored by the Commission, Pritchard et al. (Study # 2), is deeply flawed.

Perhaps the best evidence of what may occur if the newspaper cross ownership rule were weakened, is what already occurred in Canada, with CanWest Global Communications Corp. ("CanWest Global"), the owner of Canada's second largest commercial broadcast chain (Global Television Network).

Two years ago, CanWest acquired Canada's largest newspaper chain as part of a convergence drive and the corporation now controls at least 30 percent of the nation's daily newspaper circulation. Including its presence in Toronto through the *National Post,* CanWest publishes daily newspapers in every major Canadian city except Winnipeg. CanWest set off a firestorm of protest last year when it reversed journalistic tradition of local editorial independence by mandating that its 14 largest daily newspapers publish weekly editorials written at corporate headquarters.

Just four months after approval of its broadcast license renewal, CanWest Global adopted policies that undermine journalistic quality, viewpoint diversity, and local identity. In December 2001, the media giant announced that its 14 big city newspapers would have to run the same national editorial each week, issued from headquarters in

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[106] Bill McConnell, "The National Acquirers; Whether for better news or fatter profit, media companies want in on TV/newspaper crossownership," *Broadcasting and Cable,* Dec. 10, 2001.

Winnipeg. Any unsigned editorials written locally at the 14 papers could not contradict the national editorials.[107] This flies in the face of Canadian and U.S. standards of local autonomy in editorial policy. In reaction to this outrageous behavior, *Montreal Gazette* journalists held a two-day byline withdrawal in opposition, several columnists resigned, and more than 175 articles were published across Canada and elsewhere analyzing and denouncing the move. In an open letter, *Gazette* employees criticized the chain editorial policy as an abridgement of freedom of expression. They wrote:

> Essentially, CanWest will be imposing editorial policy on its papers on all issues of national significance. Without question, this decision will undermine the independence and diversity of each newspaper's editorial board and thereby give Canadians a greatly reduced variety of opinion, debate and editorial discussion…
>
> We believe this centralizing process will weaken the credibility of every Southam paper…The company is narrowing debate and corrupting both news coverage and commentary to suit corporate interests. A free press is no longer free when competing voices disappear…[108]

CanWest Global corporate headquarters subsequently censored a report in a CanWest Global-owned newspaper, the *LeaderPost,* on a speech critical of its chain editorial policy, and in June 2002 fired Russell Mills, publisher of the *Ottawa Citizen*, who persisted in publishing editorials that did not follow the CanWest chain editorial policy. This created such a firestorm in Canada that CanWest Global temporarily dropped its chain editorial policy. However, in September 2002, CanWest resumed its policy of

[107] DeNeen L. Brown, "Canadian Publisher Raises Hackles: Family is Accused of Trying to Restrict Local Newspapers' Autonomy", *Washington Post,* Jan. 27, 2002, A25. *See* also Canadian Journalists for Free Expression, "Not in the Newsroom! CanWest Global, Chain Editorials and Freedom of Expression in Canada," April 2002 ("Not in the Newsroom!") (available at http://www.cjfe.org/specials/canwest/canwintro.html); Statement of Stephen Kimber, Reply Comments of Consumers Union et al in *Newspaper/Broadcast Cross-Ownership,* Feb. 15, 2002.
[108] Open Letter from Montreal Gazette employees, Dec. 10, 2001. *See* Not in the Newsroom!

sending its papers national editorials, with the expectation that local publishers would print them.[109]

These examples provide compelling evidence that co-ownership reduces diversity by creating incentives to eliminate separate newsgathering operations in order to achieve efficiencies.  It eliminates the competition that drives aggressive newsgathering.  Outlets that would have competed for news sources and stories now share sources, assignments, staff, and editors.

Cross-ownership undermines media diversity by blurring the boundaries between the different media.  As Gomery notes, "newspapers and broadcasters provide different functions in the civic discourse."  Newspapers, broadcast networks, cable, satellite, and the Internet each provides a distinct product of news, information, and analysis.  Each has its own institutional framework, geographic orientation, and relationship with the user. The various print and electronic media organizations are not homogeneous or interchangeable media outlets, but have distinct roles in informing and engaging citizens. Gomery is rightly concerned that relaxing the cross-ownership rule will weaken the institutions "that provide in-depth analysis, opinion, and investigative reporting, and will threaten the unique institutional motivation and perspective that newspapers bring to public debate."[110]

The Commission must adopt a structural rule that bans common ownership newspapers and television station in a local market.

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[109] Interview with Jan Ravensbergen, The Newspaper Guild/CWA, Dec. 17, 2002.
[110] Gomery, 10.

## B. The Commission Should Retain the Remaining Local Television and Radio Ownership Rules

### 1. Media Consolidation Has Resulted in Less Diverse Local News Programming.

As the Commission notes, it is quite true that when media owners acquire additional properties in a local marketplace, they seek to reduce operating expenses by combining existing news operations or local station staff in order to produce one newscast or news product for all of its properties in a market.[111] This process is often referred to as seeking to achieve "synergies" in the marketplace. Often, this results in multiple media outlets of a community (which were previously independent) receiving news and public affairs programming from *one* assignment desk, under the management of *one* general manager, *one* news or program director, and essentially, *one* overall editorial viewpoint. In a significant number of instances, the stations are operating out of the same physical facility, but even where stations are left in different facilities, the experience of the professionals working at these stations is that local talent is terminated and all properties are brought under the same management and supervision.

Examples of the loss of newscasts or the sharing of news product among various media properties in a local market as a result of media consolidation abound nationwide. In addition to the examples cited above with respect to the newspaper/broadcast cross ownership rule, there are a number of examples in the television and radio markets nationwide.

In Kansas City, for example, Entercom is using the newspersons at one of its radio stations, KMBZ-AM to provide news reports on the other eight stations it owns in

[111] *NPRM,* ¶80

that market. Prior to the loosening of the ownership caps, separate and distinct news programs were produced for WDAF-AM and KUDL-FM. These programs no longer exist, and accordingly, there is less diversity in news programming in the Kansas City market than before.

In Dayton, Ohio, for example, Sinclair Broadcasting Co. owns WKEF-TV and WRGT-TV, an NBC affiliate and a Fox affiliate, respectively. The general manager of both stations recently announced that both stations could eliminate locally produced weekend weather reports as early as February. Instead of weekend weather reports that originate in Dayton, both stations plan to air weather reports from a weather center at Sinclair's home office in Baltimore. Sinclair is already broadcasting weather reports in Flint, Michigan that are produced at the company's Baltimore headquarters. In Dayton, diversity suffers because Sinclair provides the same content on its two television stations. Consolidation has eroded localism in Dayton and Flint, as well, in that Sinclair is no longer producing weather reports locally, when the local nature of weather reporting is plainly of interest to the local community.

In Chicago, Westinghouse-owned WMAQ-AM had been an all-news station since 1989. Westinghouse bought CBS and later merged with Viacom in the 1990s. The merged company's radio division, Infinity, also owns the all-news format station WBBM-AM. In 2000, Viacom/CBS/Infinity determined that it was no longer profitable for it to compete against itself, so it shut down WMAQ-AM in 2000. Because WMAQ-AM and WBBM-AM were the only all-news format stations in Chicago, when Viacom killed WMAQ-AM, it was killing WBBM-AM's only competition, leaving Chicago with only one all news radio station. Although these moves may have been highly profitable for

Infinity, they were hardly in the public interest. Though some news may be available on other radio stations to a lesser degree, many of these remaining stations in Chicago are owned by Infinity, or receive news-reports from Shadow and/or Metro Networks, reporting services owned by Westwood One, also part of the Viacom/CBS conglomerate.

The erosion of diversity and localism in these local markets exists in many other markets as well, and will be exacerbated by any further loosening of the television and radio local ownership rules. These situations are diametrically in conflict with the Supreme Court's vision of a robust media marketplace providing "diverse and antagonistic" viewpoints to the public.

### 2. Media Consolidation Has Harmed the Delivery of News to the Public By Making Profit Margins, Rather Than Journalistic Excellence, the Goal of News Operations

Previously, broadcast stations treated news and public affairs programming as a service to the local community and competed for viewers and ratings by seeking to achieve the "best" story or highest quality of journalism. Today's media conglomerates treat news only as a programming option that must be justified by the highest of profit levels, with far different results in the nature of the news and public affairs programming delivered to the public.

Now, where a media company owns a disproportionate share of the market, it is less profitable to spend resources in investigating (also known as "enterprising") a story. Rather, news outlets increase their profitability by recycling and re-purposing their competitors' product, in exchange for marketing opportunities. Owners of several properties in a market, such as radio, television, and cable stations and a newspaper, can offer advertisers a broad customer reach with which competing media companies that do not control different outlets cannot compete. In order to compete, other media companies in a market will not seek to elevate the quality of their newscasts, rather, they respond by getting access to re-use their competitors' content so as to achieve similar "synergies" that appeal to advertisers.

For example, CBS is scrambling to share news content with the Chicago Sun Times in order to compete with the Tribune Company, which owns a newspaper, a local cable news network, a broadcast TV station and a radio station. CBS and the Chicago Sun-Times recently announced a partnership to share news reporting functions. The ultimate effect is that there is less diverse content available in the market because even when properties are not jointly owned, they enter into partnerships to share content in order to compete with the few remaining players in the market who are jointly owned. Because of these competitive pressures, ownership concentration affects the nature and quality of news and public affairs programming of all the media outlets in a local market dominated by one group owner.

This global effect of ownership concentration on local markets is one reason why the conclusions reached in Spavins (Study #7) is flawed. As previously discussed, one of the many flaws of this study is that it failed to review the measures of quantity of local news and quality of news product over time. The study did not take into consideration the effect of the cost pressures caused by the horizontal and vertical integration of media companies on all stations operating in a consolidated marketplace. Even if it were true that network owned stations currently outperform affiliates (which, as discussed, the data does not in fact show), this does not mean that network owned stations would necessarily have outperformed affiliates prior to the spate of media consolidation. A more relevant study would have been one that compared the quantity of local news aired of stations in markets both prior to and following the entry of a media conglomerate into a market.

Further, there is data showing that local radio news is another casualty of consolidation. According to Vernon Stone, professor emeritus at the University of Missouri's School of Journalism, only 67 percent of radio stations today have news operations, accounting for only 12,000 employees, of which 50 percent are only part-time. This is a dramatic decrease from 1982, when 98 percent of the radio stations in the country had news operations, with 64 percent of the 19,600 news staff working full time.[112]

### 3. Corporate Owners Exert Control Over Local News Reporting Decisions

Another way that ownership concentration has stifled diversity and localism in the delivery of news is that when local stations are acquired by media conglomerates, the decision-making power and control over news gathering and reporting are taken away from local station representatives and concentrated in the hands of corporate managers located in the largest cities. The Commission is quite correct in seeking information from the public on the issue of the extent of corporate control over local news and programming decisions.[113] The independence of local stations is critically important for ensuring media diversity and localism.

Although media companies may claim that they do not exert control over news decisions in the local markets, this is simply not borne out by actual experience. Unions representing the professionals who work at local broadcast stations, including AFTRA,

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[112] Vernon Stone, "News Operations at U.S. Radio Stations," http://www.missouri.edu/~jourvs/graops.html.
[113] *NPRM,* ¶ 81.

the Writers Guild East, and NABET, report that local contract negotiations are generally conducted by corporate, rather than local station representatives. Further, local general managers will receive specific mandates regarding the types of stories to be investigated and reported. Indeed, there are several examples of local stories being "killed" because they dealt with topics that corporate management did not want to see reported.

For example, after Disney bought ABC in 1995, Disney CEO Michael Eisner said in an interview on NPR's "Fresh Air," "I would prefer ABC not cover Disney." Shortly after this interview was broadcast, it was widely reported that ABC killed a story which examined whether Disney's policy of not running criminal background checks on all new hires allowed for the employment of convicted pedophiles at its theme parks and resorts.[114]

On April 30, 2000, the Pew Research Center for People and the Press and the Columbia Journalism Review released a study showing that 41 percent of over 300 reporters surveyed reported that they had intentionally avoided newsworthy stories or softened the tone of stories to benefit the interests of the corporate news organizations.[115]

In 1997, two award-winning reporters Jane Akre and Steve Wilson, sued their employer, Fox Television and WTVT in Tampa Bay, Florida, claiming they had been terminated for refusing to "soft-pedal" their story on the effect of bovine growth hormone on the state's milk supply. In August, 2000, a Florida state court jury unanimously concluded that Fox "acted intentionally and deliberately to falsify or distort" the news reporting of reporter Akre. (Wilson's case was not successful.)

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[114] *See* Brill's Content, December 1998/January 1999, http://www.people.vcu.edu/~dcroteau/370%20Media/mouse-ke-fear.htm. *See* also http:/www.shepherdexpress.com/sherherd/19/51/newsviews/mediamusings.html

The Network Affiliated Stations Alliance (NASA) has consistently opposed the weakening of the Commission's television broadcast ownership limits in large part because of the control exerted by corporate owners over programming decisions by local station management, including imposing serious financial penalties, for the pre-emption of network programming for programming of interest to a local community.[116] In NASA's filing in the Fox case, it cited the example of NBC initially imposing serious fines on affiliates that were considering the pre-emption of the Game One of the American League Division Series in order to air the first presidential debate.[117] Even where such corporate demands are not issued explicitly issued, since local station management know that the corporate office controls the local station's budget, they will often not risk incurring the displeasure of a corporate executives. Finally, news professionals report that media ownership concentration has put enormous pressure on their journalistic independence because there are so few potential employers in the media marketplace today, on both the local and national levels, that few news professionals will risk alienating themselves by confronting or challenging unreasonable demands by these media companies.

### 4. It is Appropriate for the Commission to Utilize a Narrower "Voice" Test For Purposes of Evaluating the Television Multiple Ownership Rule Because of the Unique Nature of Broadcast Television and Its Role in Providing Local News and Public Affairs Programming to Local Communities

It is entirely appropriate for the Commission to use a "voice" test for the local

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[115] *See* "Self Censorship: How Often and Why, Journalists Avoiding the News," April 30, 2000, Pew Research Center for People and the Press, www.people-press.org
[116] *See* Brief for Intervenors National Association of Broadcasters and Network Affiliated Station Alliance, filed May 7, 2001 in *Fox Television Stations et al. v. FCC*, 280 F.3d 1027 (D.C. Cir. 2002).
[117] *Id.,* 25, n. 22.

television ownership rule that is distinct from the "voice" test used for purposes of other ownership rules.

First, as Waldfogel (Study #3) shows, the public does not substitute among the different media outlets for news. Indeed, even in the limited data relied upon by this study, the only evidence of any substitution for broadcast television news was through the Internet by people with higher incomes and education, and even this level of substitution was quite low.[118] Further, as previously noted, while Nielsen Media Research (Study #8) appears to contradict the findings in Waldfogel, the Nielsen study cannot be relied upon for policy because it simply reported what people thought they might do in the future, which, statistically, is not predictive of what people actually do.[119]

Second, these other media outlets are not independent "voices" to the extent that they are owned by the same companies that own the broadcast stations. As discussed above, the networks own and operate the cable channels, generally running the same news product as is delivered on the broadcast stations. Also, the majority of Internet sites that people may use for news are run in conjunction with a "bricks-and-mortar" news operation (i.e. a broadcast or cable property or a newspaper). The editorial content of a website is indistinguishable from the content available in the newspaper, magazine or broadcast station.

Third, as Waldfogel demonstrates, people tend to use the other outlets for news as complements, rather than substitutes, for news, which means that if one outlet, such as broadcast television, were no longer available, they would probably consume less news overall. Based on an earlier study conducted by Waldfogel, this could have adverse

[118] See discussion above. Also Baker, 9-12.
[119] *Id.,* 12-15.

consequences on civic behavior such as voting. As previously discussed, in the earlier Waldfogel study, it was found that college students who replaced the local newspaper with the *New York Times* did not vote in local elections. Thus, there are demonstrated risks to the public welfare from the loss of news outlets.

It should also be noted that non-traditional news programs, such as magazine and talk shows should not be counted as a voice for news equal to traditional news because this programming is not produced for journalistic purposes. Instead, these programs are for the purpose of maximizing "synergy" with the broadcast owner's other business enterprises. Examples include KCTV, the Kansas City Meredith-owned station which is a CBS affiliate, ran as its lead "news story" a feature about "Survivor"—a CBS network game show with no local tie. This same station also ran pre-packaged features from the CBS network program, "Better Homes and Gardens," in the place of local news.

Indeed, the rising prevalence of this type of programming in the place of traditional news reporting has alarmed news professionals in recent years. In April of 2002, Orville Schell, the dean of the Graduate School of Journalism at the University of California at Berkeley, wrote an editorial in the *San Francisco Chronicle* decrying the effect that media consolidation has had on the quality of national and local news coverage on broadcast television, and reported that the problem was so serious that the heads of the nine major journalism schools in the nation has begun holding meetings to discuss how to combat it.[120]

The current ownership rules ensure, to a degree, the continued existence of independent local television news operations. The Commission should not change the

[120] Orville Schell, "Networking the Public Interest. The medium is the mess: What to do about broadcast news?" *San Francisco Chronicle*, April 28, 2002.

rules so as to threaten this vital public resource so critical to our democratic structure.

### C. The Commission Should Retain the Remaining Local Radio Ownership Limits Because The Accelerated Pace of Deregulation in the Radio Industry to Date has Diminished the Diversity of Music Available in Local Markets, Damaged the Quality of Radio Programming Nationwide and Created A Market Burdened by Anti-Competitive Practices

#### 1. Consolidation in Radio Has Resulted in a Lack of Diversity in Music Programming Nationwide

It is undisputed that the elimination of the national radio ownership cap and the loosening of the local radio station ownership limits have resulted in massive consolidation of radio properties nationwide, and a concurrent slowing in the rate of growth of stations in local markets. In Roberts (Study #1), the authors showed that while there was a high rate in growth of radio stations beginning in 1960, this rate of growth slowed substantially since the deregulatory actions in 1996. Indeed, the rate of growth in stations in one of the markets reviewed, Kansas City, experienced no growth at all after 1980.[121] Similarly, Williams and Roberts (Study #11) also showed a sharp increase in ownership concentration during the period after 1996.[122]

Recent studies also demonstrate that this massive consolidation in the radio industry over the past six years has resulted in a sharp *decrease* in the diversity of music available in local communities, to the detriment of the radio and sound recordings industries. On November 15, 2003, the Future of Music Coalition (FMC) released a study that tracked the actual songs played by stations nationwide. The data from this study reveals that "there was considerable format homogeneity—playlist overlap between

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[121] See Baker, 15.

supposedly distinct formats [by] as much as 76 percent."[123]

Further, the FMC study also reported significant listener dissatisfaction with the content on radio. In its survey of 500 listeners nationwide, the FMC found that 80 percent of listeners wanted less repetition in songs, longer playlists and supported efforts to media consolidation. Over 67 percent of these respondents supported Congressional action to address the new "payola" systems whereby radio conglomerates pay fees to mid-level "promoters" (often owned and/or controlled by the conglomerates) to control the music played by local stations.[124]

The data collected by Williams and Roberts (Study #11) was not inconsistent with the FMC report. Williams and Roberts reported that the increase in ownership concentration had resulted in a *decrease* in the diversity of formats nationwide. In his critique of the study, Baker found the "statistically significant reduction in the diversity of songs" "*striking*" since the methodology used would have been expected to result in a bias *against* any finding of a drop in diversity. Baker explains that the methodology used in the study was likely to yield numbers showing no effect on diversity because only the "top ten play lists" of stations were measured. Accordingly, stations that only played top ten play lists were counted as the same as stations that played hundreds of songs other than those in the top ten play lists.[125]

Further, the findings in Williams and Roberts are not inconsistent with the FMC study because while the former purported to show that the diversity of songs had increased in local markets, this finding was not based on the actual number of songs

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[122] *Id.* 17-18.
[123] Peter DiCola and Kristin Thompson, "Radio Deregulation: Has it Served Citizens and Musicians?" November 18, 2002 (http://www.futureofmusic.org/images/FMCradiostudy.pdf), p. 57
[124] *Id.,* 68-90.

played on local stations, as was the FMC study. Instead, Williams and Roberts simply reported format names, without regard to the actual songs played.[126] Baker also critiques the conclusions asserted by Williams and Roberts from the data collected because there was no attempt made to evaluate the level of music diversity over time. For example, a longitudinal study could have shown the changes in music diversity played on the radio since the 1996 Act.[127]

Finally, consistent with the FMC's finding of listener dissatisfaction, Williams and Roberts also documented a decline of almost 1 percent annually in overall radio listenership nationwide.[128] While Williams and Roberts did not link this drop in the number of listeners to listener dissatisfaction, such a correlation would be consistent with the predictions set forth in the Cunningham and Alexander study.

### 2. Communities Have Lost Access to Local Talent

One radio executive has estimated that over 10,000 radio industry jobs have been lost since the passage of the 1996 Telecommunications Act,[129] including those of local on-air talent. One of the ways that media conglomerates have been able to eliminate local talent is through the use of "voice-tracking," a practice that has been trumpeted as the business plan of the deregulated future by Clear Channel, which in the last six years, has grown to be the largest group owner of radio stations in the United States, dominating the audiences and advertising revenues in all the major markets.

What voice-tracking entails is the recording of entire air shifts in remote

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[125] Baker, 18
[126] *Id.*
[127] *Id.,* 19.
[128] *Id.*

locations, splicing in music, and airing those shifts as though they were live and local broadcasts. Clear Channel records calls to radio stations, including dedications of songs, and airs those recorded calls in other markets on other stations, without identifying that the calls are not local. So, when a listener to a Clear Channel station in Washington, D.C. requests that a song be played for her husband on their anniversary, that dedication is broadcast in Detroit, or another market far away. In many instances, announcers voice-tracking a station from outside a market are given "cheat-sheets" of information on the locale of the voice-tracked station so that he/she seems to know the community when in fact the announcer may be hundreds of miles away. These practices deprive local communities of local talent and access to an important media outlet and wreaks a disservice to the public.

On a related note, the unions representing broadcast talent in smaller markets also report that even local advertising production has been lost because as stations are bought by companies headquartered in New York and Los Angeles, the advertising work for local stations gets taken out the hands of local advertising facilities and produced outside of the local markets.

### 3. Consolidation Has Resulted in the Surge of Complaints Of Monopolistic and Anti-Competitive Business Practices

Clear Channel, the company that has been most aggressive in buying up radio properties, has been the subject of a number of lawsuits and regulatory and Congressional inquiries for business practices that have been made possible by its massive concentration and vertical and horizontal integration in the radio, concert promotion and music

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[129] See Salon.com, "One Big Happy Channel?" Eric Boelert, 6/28/01, (http://www.archive.salon.com/tech/feature/2001/06/28/telecom_dereg/index.htm)

performance industries. Clear Channel has been sued for claims of monopolistic and anti-competitive practices in several cities, Denver and Cincinnati. Clear Channel has been accused of threatening musical artists and record labels with the blacklisting of their music for refusing to play at Clear Channel owned music venues upon terms dictated by Clear Channel or refusing to buy advertising spots on Clear Channel owned stations. Clear Channel has also been sued by Spanish Broadcasting for alleged anti-trust violations. Further, the Commission and the Department of Justice have received numerous complaints of anti-competitive practices by this industry leader. Finally, in 2002, Senator Russ Feingold and other Congressional representatives sponsored the "Competition in Radio and Concert Industries Act," which specifically addressed the anti-competitive business practices that have been engendered by the massive media consolidation that has followed the deregulation of the radio industry this far.

The ownership rules have historically guarded against the harms that have been raised not only by consumer groups, but also by advertisers, record labels, concert promoters and competing radio conglomerates. Further slackening of the regulatory controls in the radio industry at this point in time would violate the Commission's duty and mandate to protect the public interest.

## D. The Commission Should Retain the Dual Network Rule

The dual network rule should be retained to protect against the erosion of local news and to revitalize and encourage innovation in entertainment programming.

### 1. The Weakening of the Dual Network Rule Has Diminished Diversity in News Programming

The weakening of the dual network rule, permitting combinations such as NBC and Paxson and Viacom (CBS) and UPN and have resulted in less diversity of news programming. Further relaxing this rule will continue to result in existing independent news operations being shut down and/or shelled and replaced with re-purposed product as has been evidenced already, and any potential for new voices or diverse viewpoints from emerging independent networks will be dismissed in favor of more "cost effective" means of delivering product.

For example, in Philadelphia, where Viacom owns television stations KYW-TV (CBS) and WPSG-TV (UPN) and all news radio station KYW-AM, Viacom is assigning KYW-AM anchors to produce news for its UPN television station rather than maintain a separate news operation for that station. Therefore, where there once existed a potential for another viewpoint to emerge in this market via the UPN station, we now see news simply "re-purposed" from radio to suit television.

Similarly, in Detroit, the Viacom/CBS owned and operated station (WWJ-TV) shared newscasts with the UPN station in that market (WKBD-TV). Viacom owns both CBS and UPN. When CBS determined that its local newscasts were not profitable, it left the local news business altogether. Scripps-owned WXYZ will produce newscasts for the UPN station at 10 p.m., and there will be one fewer newscast at 11 p.m. in the Detroit market.

Another example is what appears to be happening with NBC and Telemundo. Formerly separate news operations, produced in different languages, targeted at audiences of two different cultures, have now been combined, in one facility, under one general manager. While NBC emphasizes the value its news operation brings to Telemundo's table in terms of newsgathering technology and resources, there is considerable concern that the unique and independent voice of Telemundo will ultimately be subject to the editorial and/or synergistic interests of its parent.

Further, while the expectation for combined networks was that one network would market to the mainstream audience and the second network would be free to cater to niche or minority communities,[130] this result has not materialized. The BET network, now owned by Viacom, just announced the cancellation of several news related and public affairs shows, including “BET Tonight With Ed Gordon” and “Lead Story” and “Teen Summit,” a youth-oriented public-affairs program. It was just announced that about 40 jobs would be eliminated, constituting 12 percent of BET's work force.[131]

Finally, NBC owned and operated stations and NBC affiliates across the country have in the last few years begun the process of merging station operations with Paxson Television affiliates. While the company owns less than fifty percent of Paxson Television, NBC has sought to combine the local programming, sales and technical control operations of the NBC and PAX stations. In most instances, NBC has not contributed original programming, news or entertainment, to the PAX affiliate but instead rebroadcasts its NBC news product on the PAX station. Therefore, markets in which this relationship exists have seen another emerging network’s potential for diversity of viewpoint bow to re-purposed news product and, in some cases, original news product produced by a major network station or affiliate.

[130] *NPRM,* ¶158, ¶160.
[131] Tom Jacobs, "Trent, Ed and OJ", *TV Barn,* December 18, 2002, http://www.tvbarn.com/archives/007595.html.

### 2. The Loss of Independent Producers Resulting from the Vertical Integration of the Broadcast Networks Has Resulted In Less Diversity and Innovation in Entertainment Programming

The data is clear that since the elimination of the Financial Interest and Syndication Rules ("Fin/Syn") and other limits on network control over program production, the number of independent producers has plummeted, with networks owning and utilizing their own "in-house" production facilities for the production of a wide range of television programming. This was confirmed by the data collected by Mara Einstein (Study #5). What is disputed is the effect of this dramatic shift in the television production market on the diversity of programming now being offered to the public.

Basing her conclusions on the number of different program "genres" offered on broadcast television from 1960's through 2002, i.e., Einstein concludes that the elimination of the Fin/Syn and other regulatory controls over production resulted in greater "diversity" of programming. However, the "diversity" of programming with which the Commission has long been interested in promoting is far more complex than ensuring that the public has access to game shows as well as situation comedies and dramas. The problem with the conclusions of this study is that program genres are meaningless as a measure of "viewpoint" diversity, which has been long recognized as the "touchstone" of Commission policy.

Television programming holds a distinct and vital place in reflecting and nurturing American culture and democracy. Fifteen years ago, there were over twenty different independent producers shopping programs to the competing networks. Now, the media conglomerates that own the networks also own their own production facilities, and there are only 3 or 4 major independent television producers left.[132] As a result, the networks will distribute the programming produced by their own subsidiaries, even if inferior in quality to other available product. There is simply no incentive for innovative programming.

For example, the television program, "All in the Family" was rejected by certain networks as too provocative, but was eventually picked up by one courageous network and became television history, both entertaining and challenging the American public. There is little chance of the emergence of an "All in the Family" program today. Today, the networks produce their own programs internally and distribute these for the cost value even where such programs may not be of the same quality as other programs. Ownership consolidation of television stations, both horizontally and vertically across the industry has not only damaged the quality of news programming, as discussed previously, but has also stifled innovation and diversity in entertainment television, another critically important forum for nurturing and promoting American culture and democracy.

It should be noted that Einstein also explicitly found that cost was the driving factor for the type of programming shown and that appeals to advertisers were now also a major factor in television production. Indeed, Einstein shows that the "quantity of public affairs and children's programming" has declined as a result of being less profitable programming options.[133] The Commission must take seriously this growing power and influence of advertising over the American media.

In sum, the data available is alarming, and the Commission should not take any further steps in permitting even greater ownership consolidation.

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[132] See Einstein.
[133] *Id.,* 10 –14.